

or secondary customs and border protection officer position made under § 842.1003(a) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of the agency head denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in § 842.1003(b) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

**§ 842.1008 Oversight of coverage determinations.**

(a) Upon deciding that a position is a customs and border protection officer, the Department of Homeland Security must notify OPM (Attention: Associate Director, Retirement Services, or such other official as may be designated) stating the title of each position, the occupational series of the position, the number of incumbents, whether the position is primary or secondary, and, if the position is a primary position, the established maximum entry age, if one has been established. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position.

(b) The Department of Homeland Security must establish and maintain a file containing all coverage determinations made by the agency head under § 842.1003(a) and (b), and all background material used in making the determination.

(c) Upon request by OPM, the Department of Homeland Security will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, the Department of Homeland Security must submit to OPM a list of all covered positions and any other pertinent information requested.

**§ 842.1009 Elections of retirement coverage, exclusions from retirement coverage, and proportional annuity computations.**

(a) *Election of coverage.* (1) The Department of Homeland Security must provide an individual who is a customs

and border protection officer on December 26, 2007, with the opportunity to elect not to be treated as a customs and border protection officer under section 535(a) and (b) of the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, 121 Stat. 2042.

(2) An election under this paragraph is valid only if made on or before June 22, 2008.

(3) An individual eligible to make an election under this paragraph who fails to make such an election on or before June 22, 2008, is deemed to have elected to be treated as a customs and border protection officer for retirement purposes.

(b) *Exclusion from coverage.* The provisions of this subpart and any other specific reference to customs and border protection officers in this part do not apply to employees who on December 25, 2007, were law enforcement officers, under subpart H of this part or subpart I of part 831, within U.S. Customs and Border Protection. These employees cannot elect to be treated as a customs and border protection officer under paragraph (a) of this section, nor can they be deemed to have made such an election.

(c) *Proportional annuity computation.* The annuity of an employee serving in a primary or secondary customs and border protection officer position on July 6, 2008, must, to the extent that its computation is based on service rendered as a customs and border protection officer on or after that date, be at least equal to the amount that would be payable—

(1) To the extent that such service is subject to the Civil Service Retirement System, by applying section 8339(d) of title 5, United States Code, with respect to such service; and

(2) To the extent such service is subject to the Federal Employees' Retirement System, by applying section 8415(d) of title 5, United States Code, with respect to such service.